



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER OF  
PATENTS AND TRADEMARKS  
Washington, D C 20231

OCT 18 1994

Kevin L. Daffer  
Conley, Rose & Tayon  
P.O. Box 200637  
Austin, TX 78720-0637

#5

In re Application of	:
Mohammed Anjum	:
Serial No. 08/194,985	: DECISION ON REQUEST
Filed: November 8, 1993	: FOR RECONSIDERATION
Attorney Docket No. AMD:0026	:

This is a decision on the request for reconsideration filed July 28, 1994, again requesting that the above-identified application be accorded a filing date of July 22, 1993.

The change of correspondence address filed on July 28, 1994, is acknowledged.

Receipt is also acknowledged of the "duplicate" application papers and petition filed on November 8, 1993, which were recently associated with the present application file. The \$120.00 check filed on November 8, 1993, was never processed by the Office and is being returned with this decision.

On May 27, 1994, a Decision was mailed denying a petition requesting a July 22, 1993 filing date, because the evidence submitted with the petition was not sufficient to establish that the original application papers were deposited in Express Mail service on July 22, 1993.

The present request is accompanied by a declaration of counsel, Kevin L. Daffer, describing counsel's "policy" for filing fees or papers by Express Mail. Counsel states that he signs the papers, checks the papers to ensure that the papers are complete and personally inserts the papers in an Express Mail envelope.

The additional evidence submitted on July 28, 1994, has been considered with the evidence previously submitted, but is not persuasive of applicant's entitlement to a filing date of July

22, 1993. Petitioner is claiming entitlement to a filing date of July 22, 1993, based on an allegation that the original application papers were deposited in Express Mail service on July 22, 1993, in accordance with the requirements of 37 CFR 1.10. The evidence supplied to date establishes that an Express Mail package bearing label No. TB509579807US was deposited on July 22, 1993. However, in order to grant petitioner the filing date requested, the evidence must also establish to the satisfaction of the Commissioner that the Express Mail package which was deposited on July 22, 1993, contained the original application papers described in the petition. Obviously, the PTO cannot independently verify the exact papers contained in the mailing envelope which was deposited on July 22, 1993, since the PTO has no record that the envelope in question was ever received by the PTO. Therefore, the burden of proving what was deposited in Express Mail on July 22, 1993, falls on petitioner.

The evidence presented to date does not adequately establish the contents of the Express Mail envelope which was deposited on July 22, 1993. While counsel describes his usual procedure for filing papers or fees by Express Mail, he does not state whether or not he recalls the actual preparation and his review of the present application papers. Therefore, it is not clear whether or not the original application papers were mailed according to counsel's usual procedure. Further, the practice described in the present request is obviously incomplete. Nowhere is there any mention of the fact that copies of the papers are prepared in counsel's office after the papers are signed. Counsel does not state who usually prepares these copies or if anyone checks the original papers for completeness after the copies are prepared and before the original papers are placed in the Express Mail envelope for mailing. Further, it is a common practice among patent practitioners to maintain a daily mailing or filing log in the practitioner's office of the papers and fees filed in the PTO. Counsel has neither supplied a copy of his daily mailing or filing log for July 22, 1993, nor explained why copies of such logs have not been supplied.

The previous decision has been reconsidered as requested, but the result is the same. The petition to accord the present application a filing date of July 22, 1993, is denied.

Any further request for reconsideration should be filed within TWO MONTHS of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be directed to the attention of the Office of the Deputy Assistant Commissioner for Patent Policy and Projects, Office of Special Programs, Crystal Park Building 1, Room 520, Washington, D.C. 20231.

In view of the copy of application papers filed on November 8,

1993, failure to file a timely request for reconsideration will result in the return of the application to Application Division for processing with a filing date of November 8, 1993.

*C.E. Van Horn*  
Charles E. Van Horn  
Deputy Assistant Commissioner  
for Patent Policy and Projects

JFG

Enclosure: Check No. 5155 dated 11/04/93 for \$120.00